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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,444	01/23/2004	Andrew Halliday	1410/676-41	7421
48940 7590 03/13/2009 FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER ALEXANDER, REGINALD				
ART UNIT		PAPER NUMBER		
3742				
MAIL DATE		DELIVERY MODE		
03/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/763,444

Applicant(s)

HALLIDAY ET AL.

Examiner

Reginald L. Alexander

Art Unit

3742

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-8 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9, 10, 12, 13 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/5/08.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd et al. in view of Sargent and Illy.

There is disclosed in Boyd a beverage preparation system, comprising: a plurality of beverage cartridges 10 having code 30 written thereon; means 114, 116 for receiving one of the plurality of cartridges and means 110 for supplying an aqueous medium; a reader 130 for automatically interpreting the code; processing means 140 for creating specific brewing cycle based on the code; means 150 for automatically adjusting a temperature of the aqueous medium based on the code.

There is disclosed in Sargent a beverage cartridge including different means (foaming agents, filters, apertures) for producing foaming of the beverage.

There is disclosed Illy a user interface C for initiating an operating cycle of a beverage preparation system, the cycle being independent of a beverage type being dispensed by the system.

It would have been obvious to one skilled in the art to provide cartridges of Boyd with the foaming means taught in Sargent, in order to produce a foaming liquid beverage.

It would have been obvious to one skilled in the art to provide the device of Boyd with the user interface taught in Illy, in order to allow a user to make automatic selections of various types of beverages.

Boyd teaches the use of its cartridge recognition system and beverage device operating system within the device of Illy (para. 20). Boyd also teaches that the beverage preparation system performs all of the needed operations for the production of a beverage based upon the information provided to the system by the cartridge codes. With this it is apparent that an operator need only select a cartridge, place it within the machine and turn the machine on.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 10, 12, 13 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyd et al.

There is disclosed in Boyd a beverage preparation system, comprising: a plurality of beverage cartridges 10 having code 30 written thereon; means 114, 116 for receiving one of the plurality of cartridges and means 110 for supplying an aqueous medium; a reader 130 for automatically interpreting the code; processing means 140 for creating specific brewing cycle based on the code; means 150 for automatically adjusting a temperature of the aqueous medium based on the code.

In regards to the phrase "after dispensing a beverage from the cartridges", it is apparent that the Boyd apparatus has a memory capable of storing information about operating characteristics used by the beverage machine. Since the information is stored at all times, the above operational phrase is inherently met by the Boyd reference.

In regards to the operating characteristics of the beverage preparation system stored by the memory, it is the opinion of the examiner that the various brewing directives (instructions) are characteristics of the machine. Since the machine must perform functions such as brewing water temperature changes and flow rates, such are considered characteristics of the machine.

In regards to claims 20-22, the recited functions of the device as a result of the information stored in the memory, are a result of user preferences for the memory. They do not constitute a structural limitation.

Allowable Subject Matter

Claims 3-8 are allowed.

Response to Arguments

Applicant's arguments filed 30 December 2008 have been fully considered but they are not persuasive.

Applicant argues that there is no articulated objective reason, provided by the examiner, for combining the references of Boyd and Illy. And, that without such a reason no *prima facie* case of obviousness has been provided.

It should first be noted that Boyd incorporates the subject matter of Illy (see para. 20 of Boyd). Thus, Boyd teaches one skilled in the art that using the system of Boyd with an independent user interface, as taught in Illy, is indeed obvious.

Applicant argues that Illy teaches against the present (claimed) system. Applicant goes on to state that Illy does not teach paragraph d of the claim 1. A view of the rejection shows that Illy is not being used for the teaching of paragraph d. This teaching is disclos'd by the Boyd reference.

Applicant argues that the memory of claim 9 and its functions are not taught in Boyd. While the claimed operating characteristics are not found stored in the memory taught by Boyd, such characteristics are not deemed to be structural limitations in the claims. The operating characteristics are desired operational functions. It is apparent that if one intended such functions the disclosed memory of Boyd is capable of storing the claimed operating characteristics.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/
Primary Examiner, Art Unit 3742